IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5128 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL D PATEL

Versus

JAMKANDORNA TAL.SAHAKARI KHARID VECHAN SANGH

Appearance:

MR MUKESH H RATHOD for the Petitioner.

MR DM THAKKAR for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: /04/2004

CAV JUDGEMENT

This petition under Article 227 of the Constitution of India is filed against the Award passed by the Labour Court, Rajkot in Reference (LCR) No. 416

of 1984 whereby the reinstatement with 40% back wages was awarded vide order dated 30th November,1992. The petitioner workman was reinstated after the award passed by the Labour Court.

2. It is contended by the learned counsel for the petitioner that as there was a breach of section 25(F) of the Industrial Disputes Act, the order of reinstatement of the workman was passed by the Labour Court, but only 40% back wages were awarded and there is no justification given in the award for non-granting of the remaining 60% of the back wages. It was also contended on behalf of the petitioner that the burden of proof of gainful employment is upon the respondent. The said burden of proof is not discharged by the respondent and hence, the Labour Court has committed an error in not awarding the remaining 60% of the back wages.

3. It is contended on behalf of the respondent that the workman was engaged in ginning department of the respondent at village Boricha. The said appointment was absolutely on temporary basis. It was decided by the respondent to close down the ginning department. The said decision was produced at exh. 17/4 and the petitioner workman as well as other workmen were ordered to be relieved vide order dated 30.10.1983. The said office order was produced before the Labour Court vide exh. 17/5. The petitioner was engaged as a clerk with effect from 1st November, 1980 and his services were brought to an end on 30th October, 1983.

4. It was contended on behalf of the respondent that as the petitioner had worked for a very short period and thereafter, approximately two decades have already passed, and the order of reinstatement has already been complied with and therefore, there is no justification in increasing the amount of back wages. More so, when the machinery of ginning factory has been sold off by a public auction on 10th April, 2003 and the whole ginning factory was closed down in the year 1999. It was also contended on behalf of the respondent that it is an Union (Federation) of Taluka level co-operative societies rendering services to the member societies of farmers on "no profit no loss" basis by supplying fertilizers, seeds etc. To narrate the present status of the respondent, an affidavit has been filed on behalf of the respondent on 25th March, 2004.

5. I have carefully gone through the above order passed by the Labour Court. Looking to the facts and circumstances of the case, the order of reinstatement

was passed alongwith 40% back wages. The order of termination is dated 30th October, 1983. The petitioner workman was engaged as a clerk in ginning factory from 1st November, 1980. Thereafter, he also worked in the oil mill where he was irregular. A show cause notice was given by the respondent. The petitioner workman was also suspended. This aspect of the matter has been discussed in para-6 of the Award passed by the Labour Court. Therefore, for the reasons recorded in para-7 of the impugned award, it was thought it fit to award 40% back wages. Looking to the facts and circumstances of the case and the affidavit filed by the respondent dated 25th March, 2004, I see no reason to deviate from what is awarded by the Labour Court. More than two decades's period has elapsed from the date of termination of the petitirner workman. Earlier also, the petitioner workman had committed misconduct for which he was suspended. Moreover, the ginning mill has already been closed down from 1999 and even the machinery thereof is sold through a public auction on 10th April, 2003. Cumulative effect of all these circumstances does not permit me to award further back wages than what is awarded by the Labour Court, Rajkot.

6. The learned advocate for the respondent has placed reliance on the decision of this Court in the case of Rajendraprasad Shankarlal Purohit vs. Executive Engineer reported in 2002(3) GLH, 315, especially para-19 thereof. Looking to the facts of that case and the long time gap, in that case, the Court awarded 50% of the back wages. Looking to the facts of the present case and the aforesaid judgment, the Award passed by the Labour Court, Rajkot appears to be true and correct and in consonance with the provisions of law. Hence, this petition deserves to be dismissed. Rule discharged with no order as to costs.

(D.N.Patel,J)

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